IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

First Appeal No.345 of 2007

-=-=-=

the Court below to contend that there were no such reasons at that time. He further argues that the appellant is only trying to harass the present respondent and he states that the proceedings u/s. 125 of the Code of Criminal Procedure filed by her were also dismissed in default.

We have perused the paper book of present appeal with the assistance of both the counsel. We find that on record there was medical certificate issued by the Medical Practitioner which certifies that she was suffering from some ill-ness from 2.6.2006 to 10.6.2006. Further perusal of the judgment also reveals that the Court below has been carried away by the observations in Bailiff's report. In these circumstances, we find that the Court below has erred in not looking into the fact that it was a dispute between the husband and wife and the decree delivered ex-parte was decree for divorce. We are not in a position to hold that the appellant has acted with malice in the matter. In the circumstances, we condone the delay and also set aside the ex-parte decree of divorce dt. 14.7.2006. However, it is made clear that PA-124 of 2006 restored to the file of Family Court for grant of divorce filed by the present respondent shall be decided as early as possible and in any case within a period of four months from the date of communication of this order.

It is further made clear that the appellant has agreed before us not to claim any interim maintenance during pendency of said proceedings before the Family Court. In fact, in view of said acceptance and statement made by the learned counsel for the

appellant, we have agreed to set aside the ex-parte decree against the appellant also in order to give one more fair chance to the present appellant to contest the matter on merits. The judgment delivered on 27.2.2007 by the Family Court in MJC No.49 of 2006 is hereby quashed and set aside. Said MJC No. 49/2006 is allowed. Petition No.124 of 2006 is restored back to the file of Family Court for its decision in accordance with law after giving due opportunity to the present appellant to file Writ Petition and contest the matter. The appellant to file her Written Statement within 15 days from today and thereafter, Court below shall proceed further and decide the PA 124/06 as early as possible and in any case within a period of 3 ½ months. Rule is made absolute accordingly.

However, in the circumstances of the case, there shall be no order as to costs.

- JUDGE JUDGE

ssj